

**Staff  
Summary  
Report**



**To: Mayor & City Council  
Through: City Manager**

**Agenda Item Number 11  
Meeting Date 9/20/01**

**SUBJECT: Addendum to Hayden Ferry Lakeside Development & Disposition Agreement**

**PREPARED BY: Jan Schaefer, Economic Development Director (350-8036)**

**REVIEWED BY: Patrick Flynn, Assistant City Manager (350-8399)**

**BRIEF:** Request approval of an addendum to the Hayden Ferry Lakeside Development & Disposition Agreement that revises the current Schedule of Performance

**COMMENTS:** **RIO SALADO (0112-07-03)** Request approval of an addendum to the Hayden Ferry Lakeside Development & Disposition Agreement that revises the current Schedule of Performance

**Document Name: ( 20010920edevjs01) Supporting Documents:Yes**

**SUMMARY:** On April 3, 2000, the City of Tempe entered into a Development and Disposition Agreement with Hayden Ferry Lakeside, LLC (the Developer) for the development of property located north of the Rio Salado Parkway and just east of Mill Avenue. Pursuant to the Schedule of Performance the Developer was to commence construction of a hotel on the property by September 30, 2001. The Developer has requested a delay in commencement of the hotel construction for three years, until September 30, 2004. The Certificate of Occupancy would then be delayed until June 30, 2006.

In addition, the Developer has requested that the construction of the first 60 residential units be delayed for nine months from December 31, 2001 to September 30, 2002. This would mean that the Certificate of Occupancy for the first 60 residential units would be postponed to March 30, 2004. The developer is working diligently on market studies and analysis to finalize an economically feasible project that can be constructed within this new deadline.

The Hayden Ferry Lakeside Development and Disposition Agreement recognizes that "the Developer and the City may, by

mutual written agreement, refine and revise” the Schedule of Performance as “may be necessary to accommodate any unforeseen factors, events or unexpected occurrences which may necessitate such refinement or revision.”

The Development & Disposition Agreement also indicates that the purchase price to be paid by the Developer for any parcel of city-owned property within the project is subject to increase based upon the Consumer Price Index, with a minimum of a least 3% and a maximum of not more than 6% in the price. Accordingly, with this delay, there is an increase in the purchase price of the parcels not yet transferred.

**FISCAL NOTE:** While the delay in construction of these projects will mean that the economic impact of the hotel and residential units is also delayed, staff has determined that there is value to the City in waiting for these specific projects and in working with the Hayden Ferry Lakeside, LLC. to obtain these uses and the quality design and construction that they will bring to the Rio Salado/Downtown Tempe area with the development of these projects. The residential use is only slightly delayed and while the hotel delay is more significant, the delay is not due to any lack of intent on the part of the Developer to fulfill the obligations of the Development & Disposition Agreement.

**RECOMMENDATION:** Staff recommends approval of the addendum to the Hayden Ferry Lakeside Development & Disposition Agreement which revises the current Schedule of Performance.

## **ADDENDUM TO DEVELOPMENT AND DISPOSITION AGREEMENT**

**(Hayden Ferry Lakeside Development Project)**

This ADDENDUM TO DEVELOPMENT AND DISPOSITION AGREEMENT ("Addendum") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between the CITY OF TEMPE, an Arizona municipal corporation (which, together with any successor public body or entity hereafter designated by or pursuant to law, is hereinafter called the "City"), and HAYDEN FERRY LAKESIDE, LLC., an Arizona limited liability company (hereinafter called "Developer").

### **RECITALS**

A. The City and Developer are parties to that certain Development and Disposition Agreement dated April 3, 2000 and recorded on April 5, 2000 as Document No. 00-0255087, official records of Maricopa County, Arizona (the "DDA").

B. The City and Developer desire to set forth their mutual agreement as to certain matters relevant to DDA, subject to the terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, the City and Developer agree as set forth below:

1. **Applicability of DDA.** With the exception of the provisions stated herein, all other provisions of the DDA shall remain in full force and effect. Capitalized terms used but not defined in this Addendum shall have the meaning provided in the DDA.

2. **Schedule of Performance.** Effective upon the execution of this Addendum, and without need for further action by any party, the Amended Schedule of Performance attached hereto as Exhibit "D-1" automatically shall be deemed to be substituted for the Schedule of Performance attached to the DDA as Exhibit "D", and all references in the DDA shall be deemed to refer to the Amended Schedule of Performance.

3. **Execution.** This Agreement shall be effective if executed and acknowledged by Developer and submitted to the City Clerk within ten (10) days after the Approval Date.

DATED as of the date and year first set forth above.

CITY OF TEMPE, a municipal corporation

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

DEVELOPER:

HAYDEN FERRY LAKESIDE LLC, an Arizona  
limited liability company

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF ARIZONA    )  
                                  ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001, by Neil G. Giuliano, the duly elected Mayor of the City of Tempe, State of Arizona.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001, by \_\_\_\_\_, the \_\_\_\_\_ of Hayden Ferry Lakeside LLC an Arizona limited liability company whom I know personally, and in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT D-1

### AMENDED SCHEDULE OF PERFORMANCE

|    |  |                                 |
|----|--|---------------------------------|
| 1. | Commencement of Construction of at least 120,000 sq. ft (office/retail)  | On or before September 30, 2001 |
| 2. | Commencement of Construction of at least 200-room hotel (approx. 160,000 sq. ft.   | On or before September 30, 2004 |
| 3. | Certificate of Completion for at least 120,000 sq. ft. (office/retail)   | On or before June 30, 2003      |
| 4. | Certificate of Completion for at least 200-room hotel  | On or before June 30, 2006      |
| 5. | Commencement of Construction of at least 60 residential units  | On or before September 30, 2002 |
| 6. | Certificate of Completion for at least 60 residential units  | On or before March 30, 2004     |
| 7. | Certificate(s) of Completion for at least 500,000 sq. ft. of commercial development in the aggregate   | On or before December 31, 2006  |
| 8. | Certificate(s) of Completion for at least 700,000 sq. ft. of commercial development in the aggregate   | On or before December 31, 2008  |
| 9. | Building Permits for construction of at least eighty percent (80%) of the building square footage planned for development within Hayden Ferry-North as shown on the Amended Preliminary PAD for Hayden Ferry-North, as modified and amended from time to time with the approval of the City. | On or before June 30, 2017      |